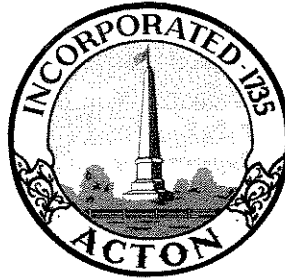
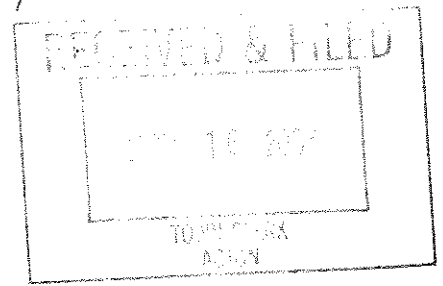


FYI



## **DECISION 06-07**

### **DECISION ON THE PETITION BY KENOZA HEIGHTS DEVELOPMENT, 2 HICKORY HILL TRAIL**

A public hearing of the Acton Board of Appeals (the "Board") was held in the Town Hall on Monday, October 2, 2006 at 7:45 P.M. on the petition by Kenoza Heights Development (the "Petitioner") for a Special Permit under Sections 8.3.3 and 8.3.4 of the Zoning Bylaw to allow the construction of a building on a nonconforming lot where the existing structure has been damaged by more than 50% due to fire. Map E-3/Parcel 35.

Board members present at the hearing were Jonathan Wagner, Chairperson; Kenneth Kozik, Member; Cara Voutselas, Member; Garry Rhodes, Building Commissioner; Cheryl Frazier, Board of Appeals Secretary; and representing the Petitioner, John Sousa and Greg Kimball.

Mr. Wagner opened the hearing and read the contents of the file. Included in the file was a memo from Town Planner, Roland Bartl, stating that the Planning Department has no concerns regarding the petition. Mr. Wagner stated for the record that he had represented the seller of the property as her attorney during the sale of the property to the applicant on August 1st, that neither he nor his client had any financial interest in the outcome of this case and that he could make an unbiased decision on the merits of the petition.

The Petitioner explained that the lot at 2 Hickory Hill Trail is located in the R-4 Zoning District and is nonconforming because the lot size is 24,000 square feet where 40,000 square feet is required. In addition, the existing structure violates the R-4 front yard setback of 45 feet. The lot has frontage on two streets and the current structure is about 32 feet from Hickory Hill Trail and 38 feet from Balsam Drive. The existing structure suffered a fire and was damaged to an extent greater than 50% of its fair market value. The Petitioner proposes demolishing the existing structure and building a new residence. The new structure will be about 800 square feet larger than the existing structure, but will not encroach any further into the setback. The proposed new structure will be a two-story colonial with attached garage.

The Board of Appeals, after considering the materials submitted with petition, together with the information developed at the hearing finds that:

1. The Petitioner seeks a Special Permit under Sections 8.3.3 and 8.3.4 of the Zoning Bylaw.
2. The lot at 2 Hickory Hill Trail is located in the R-4 Zoning District. The R-4 Zoning District has a minimum lot size of 40,000 square feet and front yard setback of 45 feet.
3. The lot at 2 Hickory Hill Drive is about 24,000 square feet in size and is therefore nonconforming. The current structure is about 32 feet from Hickory Hill Trail and 38 feet from Balsam Drive and is therefore nonconforming.
4. The structure at 2 Hickory Hill Trail has been damaged by fire to an extent greater than 50% of its fair market value.
5. The new construction will not be detrimental or injurious to the neighborhood.
6. The new structure, although somewhat larger, is no less in compliance with the dimensional requirements of the Bylaw than the existing structure.
7. Desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Bylaw. The granting of the Special Permit is in accordance with the Master Plan.

Therefore, the Board of Appeals, after reviewing the available materials and based upon the above findings, voted to GRANT the Special Permit under Sections 8.3.3 and 8.3.4 of the Zoning Bylaw subject to the following condition:

The new structure built at 2 Hickory Hill Trail shall be built substantially in accordance with the plans submitted to the Board.

Any person aggrieved by this decision may appeal pursuant to Massachusetts General Laws Chapter 40A, Section 17 within 20 days after this decision is filed with the Acton Town Clerk.

#### **TOWN OF ACTON BOARD OF APPEALS**



Jonathan Wagner, Chairperson



Kenneth F. Kozik, Member



Cara Voutselas, Member

**Effective Date of Special Permit:** No special permit or any modification, extension or renewal thereof shall take effect until a copy of this decision has been recorded in the Middlesex County South District Registry of Deeds. Such decision shall bear the certification of the Town Clerk that 20 days have elapsed after the decision has been filed in the Office of the Town Clerk, and that no appeal has been filed, or that if such an appeal has been filed it has been dismissed or denied.